

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

2004 MAY 24 P 4:49

U.S. DISTRICT COURT
DISTRICT OF MASS.

PACIFIC PACKAGING
PRODUCTS, INC.,
Plaintiff,

v.

BALDWIN & CLARKE,
JEFFERSON PILOT SECURITIES CORP.,
BENEFIT STRATEGIES, LLC,
MICHAEL J. KENNEDY, AND
SCOTT D. LAVALLEY

Defendant.

Civil Action No.

MAGISTRATE JUDGE *Chen*

RECEIPT # *56169*
AMOUNT \$ *150*
SUMMONS ISSUED *N/A*
LOCAL RULE 4.1 */*
WAIVER FORM */*
MCF ISSUED */*
BY DPTY. CLK. *P.O.W.*
DATE *5/25/04*

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants Baldwin & Clarke Advisory Services, Inc. (identified by Plaintiff in the caption as "Baldwin & Clarke"), Jefferson Pilot Securities Corp., Michael J. Kennedy, and Scott D. LaValley hereby file this Notice of Removal. In connection therewith, the Defendants state as follows:

1. State Court Action

Plaintiff Pacific Packaging Products, Inc. sued each of the aforementioned defendants, as well as Benefit Strategies, LLC, in the Superior Court of the Commonwealth of Massachusetts for Middlesex County, Civil Action No. 2004-01576, for negligence and indemnification.

2. Federal Jurisdiction

All of the Plaintiff's claims arise out of the management of a 401K retirement benefits plan (the "Plan") established for the Plaintiff's employees. The Plan meets the definition of an "employee benefit plan" under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, *et seq.*, ("ERISA"), so all of the Plaintiff's common law claims are preempted by ERISA.

29 U.S.C. § 1144(a). Therefore, a federal question exists, and this Court has subject-matter jurisdiction, pursuant to 28 U.S.C. § 1331. Consequently, removal to this Court is proper pursuant to 28 U.S.C. § 1441.

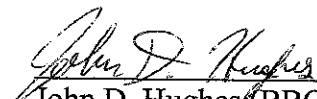
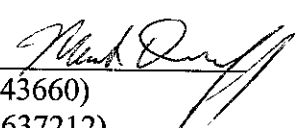
3. Timeliness of Notice of Removal.

Defendants first received notice of the Complaint by receiving their respective Summonses and a copy of the Complaint on May 3, 2004. Removal of this action is, therefore, timely under 28 U.S.C. § 1446(b).

4. Relief Requested.

Defendants request that the United States District Court for the District of Massachusetts assume jurisdiction over the above-captioned action. Pursuant to 28 U.S.C. § 1446(a), copies of all process and pleadings served upon Defendants are attached as Exhibit A. Certified copies of the entries in the Superior Court docket will be filed in connection with Defendants' Local Rule 81.1 Statement.

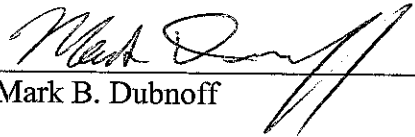
Respectfully Submitted,
BALDWIN & CLARKE,
JEFFERSON PILOT SECURITIES CORP.,
MICHAEL J. KENNEDY, AND
SCOTT D. LAVALLEY,
By their attorneys

 
John D. Hughes (BBO# 243660)
Mark B. Dubnoff (BBO# 637212)
EDWARDS & ANGELL, LLP
101 Federal Street
Boston, MA 02110
(617) 439-4444

May 24, 2004

CERTIFICATE OF SERVICE

I, Mark B. Dubnoff, hereby certify that on this 24th day of May, 2004, I caused a copy of the foregoing document to be sent by first-class mail, postage prepaid, to Plaintiff's counsel, Lora M. McSherry, Esq., Phillips, Gerstein, Holber & Channen, LLP, 25 Kenoza Avenue, Haverhill, MA 01830.


Mark B. Dubnoff

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED

CLERK'S OFFICE

1. Title of case (name of first party on each side only) Pacific Packaging Products, Inc. v. Baldwin & Clarke, et al.
2. Category in which the case belongs based upon the numbered nature of suit. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- Pacific Packaging Products, Inc. v. Baldwin & Clarke, et al., MICV 2004-01576
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME John D. HughesADDRESS Edwards & Angell, LLP, 101 Federal Street, Boston, MA 02110TELEPHONE NO. 617-439-4444

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Pacific Packaging Products, Inc.

(b) County of Residence of First Listed Plaintiff Middlesex
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

IN CLERKS OFFICE

Baldwin & Clarke, Jefferson Pilot
Securities Corp., Benefit Strategies, LLC,
Michael J. Kennedy, and Scott O. LaValley

County of Residence of First Listed Merrimack

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, INDICATE LOCATION OF THE
LAND INVOLVED.

U.S. DISTRICT COURT
DISTRICT OF MASS.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Lora M. McSherry
Phillips, Gerstein, Holber & Channen, LLP
25 Kenoza Avenue
Haverhill, MA 01830

Attorneys (If Known) (617) 439-4444

John D. Hughes
Mark B. Dubnoff
Edwards & Angell, LLP
101 Federal St., Boston, MA 02110

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties
in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff
and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place
of Business in This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place
of Business in Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product	Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 130 Miller Act	Liability	<input type="checkbox"/> 365 Personal Injury —	<input type="checkbox"/> 625 Drug Related Seizure	28 USC 157	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel &	Product Liability	of Property 21 USC		<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	
<input type="checkbox"/> 150 Recovery of Overpayment	Slander	<input type="checkbox"/> 368 Asbestos Personal	<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 460 Deportation	
& Enforcement of	<input type="checkbox"/> 330 Federal Employers'	Injury Product	<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 470 Racketeer Influenced and	
<input type="checkbox"/> 160 Medicare Act	Liability	Liability	<input type="checkbox"/> 650 Airline Regs.		Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 660 Occupational		<input type="checkbox"/> 810 Selective Service	
Student Loans	<input type="checkbox"/> 345 Marine Product	<input type="checkbox"/> 371 Truth in Lending	Safety/Health		<input type="checkbox"/> 850 Securities/Commodities/	
(Excl. Veterans)	Liability	<input type="checkbox"/> 380 Other Personal	<input type="checkbox"/> 690 Other		Exchange	
<input type="checkbox"/> 153 Recovery of Overpayment	<input type="checkbox"/> 350 Motor Vehicle	Property Damage			<input type="checkbox"/> 875 Customer Challenge	
of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle	Product Liability			12 USC 3410	
<input type="checkbox"/> 160 Stockholders' Suits	Product Liability	<input type="checkbox"/> 385 Property Damage			<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	Product Liability			<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 195 Contract Product Liability					<input type="checkbox"/> 893 Environmental Matters	
					<input type="checkbox"/> 894 Energy Allocation Act	
					<input type="checkbox"/> 895 Freedom of	
					Information Act	
					<input type="checkbox"/> 900 Appeal of Fee	
					Determination of Access to	
					Justice	
					<input type="checkbox"/> 950 Constitutionality of	
					State Statutes	
					<input type="checkbox"/> 890 Other Statutory Actions	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.
Do not cite jurisdictional statutes unless diversity.)

ERISA - 29 U.S.C. §§1001 et seq.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____